

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

PREAMBLE

1. Sections Affected

R4-30-202.01
R4-30-203
R4-30-208
R4-30-209
R4-30-210
R4-30-211
R4-30-301

Rulemaking Action

New Section
Amend
Amend
Amend
Amend
Amend
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. § 32-106(A)(1), (5), (6), (9); A.R.S. § 32-106(F)

Implementing statute: A.R.S. § 32-131

3. The effective date of the rules:

February 14, 2002

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 6. A.A.R. 2596, July 17, 2000

Notice of Rulemaking Docket Opening: 6. A.A.R. 4610, December 8, 2000

Notice of Proposed Rulemaking: 7. A.A.R.1226, March 16, 2001

Notice of Supplemental Proposed Rulemaking: 7. A.A.R. 3810, August 31, 2001

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: La Vern Douglas

Address: 1990 W. Camelback Road, #406

Telephone: (602) 255-4053, ext. 209

Fax: (602) 255-4051

6. An explanation of the rules, including the agency's reasons for initiating the rules:

The agency is complying with statutory enactment of provisions to regulate the certification of remediation specialists. This process includes updating other rules to make them consistent with the recent statutory changes, agency practice, and current rule writing standards.

7. A reference to any study that the agency relies on in its evaluation of or justification for the final rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study and any other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The rules will impose a minimal administrative burden on the agency because it is anticipated that the rules will require processing of only four additional certificate renewals per year. The agency monitors licensing of six other professions that must also comply with statutory time-frames, so the additional time-frame rules will also have a minimal economic impact on the agency. It is anticipated that there will also be minimal economic impact on other state agencies, such as the Secretary of State and the Governor's Regulatory Review Council. The rules impose no burden on small businesses or consumers other than the minor fees required from registrants. It is anticipated that both consumers and the Arizona Department of Environmental Quality will benefit from the rules. Remediation projects conducted under the supervision of a certified remediation specialist may be brought to a speedier conclusion, to the benefit of the consumer, by not being subjected to the requirements of Arizona Department of Environmental Quality audits. The Arizona Department of Environmental Quality, pursuant to their agency rules, is only required to audit 25% of remediation projects completed under the supervision of a certified remediation specialist, reducing their workload.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Numerous minor grammatical and formatting changes have been made as a result of continuous review. The original requirement of provision of citizenship and legal residence information was removed because it is not asked for on the application form. There were no significant substantive changes between the proposed rules and the final rules.

11. A summary of the principal comments and the agency response to them:

No comments about the proposed rulemaking were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

R4-30-301(14) references the April 12, 2001 Arizona Professional Lands Surveyors Association Arizona Boundary Survey Minimum Standards, a copy of which is attached. These standards were adopted by the Board on June 15, 2001 and are intended to replace the Minimum Standards for Arizona Land Boundary Surveys adopted August 19, 1994. After publication by the Secretary of State, notice, and the required time for public request for hearing, the Board approved the replacement standards at its December 14, 2001 meeting.

14. Was this rule previously adopted as an emergency rule?

No

15. Full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 2. REGISTRATION PROVISIONS

Section

R4-30-202.01. Remediation Specialist Certification

R4-30-203. Waiver of Examination

R4-30-208. Education and Work Experience Requirements

R4-30-209. ~~Timeframes~~ Time-frames For Professional Registration, Certification, or In-training Designation

R4-30-210. ~~Timeframes~~ Time-frames for Approval to Sit for the Professional, Certification, or In-training Examination

R4-30-211. ~~Timeframes~~ Time-frames for Waiver of the Professional, Certification, or In-Training Examination

ARTICLE 3. REGULATORY PROVISIONS

Section

R4-30-301. Rules of Professional Conduct

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-202.01. Remediation Specialist Certification

A. A candidate for certification as a remediation specialist shall submit an original and 1 copy of a completed application package containing the following information:

- 1. Name, residence address, residence telephone number, and residence facsimile number of the candidate, if applicable;**
- 2. Date of birth and social security number of the candidate;**
- 3. A detailed explanatory statement regarding:**
 - a. Any disciplinary action, including suspension and revocation, taken by any other state or jurisdiction on any license held by the candidate in any other state or jurisdiction;**

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- b. Refusal of any license by any other state or jurisdiction;
- c. Any pending disciplinary action in any other state or jurisdiction on any license held by the candidate;
- d. Any alias or other name used by the candidate; and
- e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
- 4. Jurisdiction in which any other license is held; type of license, license number, year license granted, how license was granted (that is, by examination, education, experience or reciprocity), and the number of examination hours taken by the candidate;
- 5. Name of the state or jurisdiction, type of license the candidate is seeking, and the current status of any application for license pending in any other state or jurisdiction;
- 6. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university or educational institution that the candidate attended;
- 7. Relevant certified transcripts sent directly to the Board from the registrar of educational institutions that the candidate attended;
- 8. Name, current address, telephone number, and facsimile number of the candidate's current and former employers in the area of remediation; dates of employment, candidate's title; description of the work performed; and number of hours worked per week;
- 9. Names and addresses of immediate supervisors in past and present employment in the area of remediation. Candidates who have been working in remediation for 10 or more years shall provide the names and addresses of all immediate supervisors during the most recent ten-year period. If a candidate cannot supply the names and addresses of supervisors for at least 3 engagements, the candidate shall provide to the Board a written, sworn statement explaining the inability to provide this information.
- 10. A release authorizing the Board to investigate the candidate's education, experience, moral character, and repute.
- 11. Certificate of Experience Record and Reference forms from the candidate's present and past immediate supervisors. The candidate shall also provide Certificate of Experience Record and Reference forms to additional references as required by the Board. The candidate shall provide the name, address, and telephone numbers of all references. The candidate shall ensure that completed reference forms are provided to the Board;
- 12. An affidavit that the information provided to the Board is accurate, true, and complete;
- 13. A completed finger print card; and
- 14. The applicable fees.
- B.** The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the candidate is eligible in all other aspects to be certified as a remediation specialist, the Board staff or committee shall recommend that the Board certify the candidate as eligible to take the examination. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true or that the candidate is eligible in all other respects for registration, the Board staff shall make a further investigation of the candidate. The Board staff and committee shall submit recommendations to the Board for approval. The Board may also require a candidate to submit additional oral or written information if the candidate has not furnished satisfactory evidence of qualifications for examination or certification.

R4-30-203. Waiver of Examination

- A.** No change
 - 1. No change
 - 2. No change
- B.** No change
 - 1. No change
 - 2. No change
 - 3. No change
- C.** No change
- D.** No change
- E.** No change
- F.** No change
- G.** The Board shall waive the remediation specialist examination requirement if the candidate has successfully completed a remediation specialist examination in another jurisdiction that is substantially equivalent to the remediation specialist examination provided in Arizona.

R4-30-208. Education and Work Experience Requirements

- A.** ~~Educational~~ Education credit
 - 1. The Board shall grant credit according to the following:
 - a. No change
 - b. No change

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- c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. Remediation specialist applicants with an undergraduate degree as specified in subsection (A), or up to five years of education directly relating to remediation.
2. The Board shall grant all other ~~educational~~ education credit according to the following:
- a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
- B. The Board shall credit work experience as follows:
- 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. Remediation specialist applicants shall have at least eight years of acceptable education and remediation experience, including at least three years of experience supervising remediations

R4-30-209. ~~Timeframes~~ Time-frames for Professional Registration, Certification, or In-training Designation

- A. Within 60 days of receiving the initial application package for professional registration, certification, or in-training designation, the Board shall finish an administrative completeness review.
- 1. No change
 - 2. If the application package is incomplete, the Board shall notify the candidate that the package is deficient and specify the information or documentation that is missing. All ~~timeframes~~ time-frames are suspended from the date the notice is mailed to the candidate until the Board receives all missing information or documentation.
 - 3. A candidate with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the candidate fails to supply the missing information or documentation, the Board may close the candidate's application file. Any fee paid by the candidate is non-refundable. A candidate whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
 - 4. If a candidate requests to sit for the professional, certification, or in-training examination, the ~~timeframes~~ time-frames in R4-30-210 apply until the Board grants or denies the candidate's request to sit for the examination.
 - 5. If a candidate requests a waiver of examination under R4-30-203, the ~~timeframes~~ time-frames in R4-30-211 apply until the Board grants or denies the waiver of examination.
- B. The Board shall complete its substantive review of the application package and render a decision no later than 60 days after the date the Board mails the notice of administrative completeness to the candidate.
- 1. If the Board finds that the candidate meets all requirements in statute and rule, the Board shall approve the candidate for professional registration, certification, or in-training designation.
 - 2. If the Board finds that the candidate does not meet all requirements in statute and rule, the Board shall deny the candidate professional registration, certification, or in-training designation. The Board shall provide written notice of the denial. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, and an explanation of the candidate's right to appeal, including the number of days the candidate has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeals process.
 - 3. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information and documentation to be submitted and the deadline for submission. The ~~timeframe~~ time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is served until the date that all missing information or documentation is received.
 - 4. When the Board and candidate mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frame totaling no more than 30 days.
 - 5. If the candidate fails to supply the missing information or documentation by the deadline date, the Board may close the candidate's application file. Any fee paid by the candidate is non-refundable. A candidate whose file has been

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closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.

- C. No change
- D. For the purposes of A.R.S. § 41-1073, the Board establishes the following ~~timeframes~~ time-frames for a candidate applying for professional registration, certification, or in-training designation:
1. Administrative completeness review ~~timeframe~~ time-frame: 60 days;
 2. Substantive review ~~timeframe~~ time-frame: 60 days; and
 3. Overall ~~timeframe~~ time-frame: 120 days.

R4-30-210. ~~Timeframes~~ Time-frames for Approval to Sit for the Professional, Certification, or In-training Examination

- A. Within 60 days of receiving the initial application package to sit for the professional, certification, or in-training examination, the Board shall finish an administrative completeness review.
1. No change
 2. If the application package is incomplete, the Board shall notify the candidate that the package is deficient and specify the information or documentation that is missing. All ~~timeframes~~ time-frames are suspended from the date the notice is mailed to the candidate until the Board receives all missing information or documentation.
 3. A candidate with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the candidate fails to supply the missing information or documentation, the Board may close the candidate's application file. Any fee paid by the candidate is non-refundable. A candidate whose file has been closed and who later wishes to sit for the in-training, certification, or professional examination shall submit a new application package and pay the applicable fee.
- B. The Board shall complete its substantive review of the application package and render a decision no later than 120 days after the date the Board mails the notice of administrative completeness to the candidate.
1. If the Board finds that the candidate meets all requirements in statute and rule, the Board shall approve the candidate to sit for the next available in-training, certification, or professional examination.
 2. If the Board finds that the candidate does not meet all requirements in statute and rule, the Board shall not allow the candidate to sit for the in-training, certification, or professional examination. The Board shall provide written notice of its refusal to allow the candidate to sit for the examination. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, and an explanation of the candidate's right to appeal, including the number of days the candidate has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeals process.
 3. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The ~~timeframe~~ time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is served until the date that all missing information or documentation is received.
 4. When the Board and candidate mutually agree in writing, the Board or its designee shall grant extensions of the substantive review ~~timeframe~~ time-frame totaling no more than 45 days.
 5. If the candidate fails to supply the missing information or documentation by the deadline date, the Board may close the candidate's application file. Any fee paid by the candidate is non-refundable. A candidate whose file has been closed and who later wishes to sit for the in-training, certification, or professional examination shall submit a new application package and pay the applicable fee.
- C. No change
- D. For the purposes of A.R.S. § 41-1073, the Board establishes the following ~~timeframes~~ time-frames for a candidate wishing to sit for either the in-training, certification, or professional examination:
1. Administrative completeness review ~~timeframe~~ time-frame: 60 days;
 2. Substantive review ~~timeframe~~ time-frame: 120 days; and
 3. Overall ~~timeframe~~ time-frame: 180 days.

R4-30-211. ~~Timeframes~~ Time-frames for Waiver of the Professional, Certification, or In-training Examination

- A. Within 60 days of receiving the initial application package for a waiver of the professional, certification, or in-training examination, the Board shall finish an administrative completeness review.
1. No change
 2. If the application package is incomplete, the Board shall notify the candidate that the package is deficient and specify the information or documentation that is missing. All ~~timeframes~~ time-frames are suspended from the date the notice is mailed to the candidate, until the Board receives all missing information or documentation.
 3. A candidate with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the candidate fails to supply the missing information or documentation, the Board may close the candidate's application file. Any fee paid by the candidate is non-refundable. A candi-

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date whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.

- B. The Board shall complete its substantive review of the application package and render a decision no later than 120 days after the date the Board mails the notice of administrative completeness to the candidate.
1. If the Board finds that the candidate meets all requirements in statute and rule, the Board shall waive the professional, certification, or in-training examination requirement for the candidate.
 2. If the Board finds that the candidate does not meet all requirements in statute and rule, the Board shall deny the waiver. The Board may allow the candidate to sit for the professional, certification, or in-training examination, or the Board may require the candidate to submit an application to sit for the professional, certification, or in-training examination. The Board shall provide written notice of the denial. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, and an explanation of the candidate's right to appeal, including the number of days the candidate has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeals process.
 3. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The ~~timeframe~~ time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is served until the date that all missing information or documentation is received.
 4. When the Board and candidate mutually agree in writing, the Board or its designee shall grant extensions of the substantive review ~~timeframe~~ time-frame totaling no more than 45 days.
 5. If the candidate fails to supply the missing information or documentation by the deadline date, the Board may close the candidate's application file. Any fee paid by the candidate is non-refundable. A candidate whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
- C. No change
- D. For the purposes of A.R.S. § 41-1073, the Board establishes the following ~~timeframes~~ time-frames for a candidate requesting waiver of the professional, certification, or in-training examination:
1. Administrative completeness review ~~timeframe~~ time-frame: 60 days;
 2. Substantive review ~~timeframe~~ time-frame: 120 days; and
 3. Overall ~~timeframe~~ time-frame: 180 days.

ARTICLE 3. REGULATORY PROVISIONS

R4-30-301. Rules of Professional Conduct

- A. All registrants and certified remediation specialists shall comply with the following standards of professional conduct:
1. A registrant or certified remediation specialist shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or subpoena.
 2. A registrant or certified remediation specialist shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting or providing ~~professional~~ services to members of the public.
 3. ~~A registrant shall not sign, stamp or seal any professional plans, drawings, prints, land surveys, reports, specifications or other documents not prepared by the registrant or a bona fide employee.~~
 - 4-3. A registrant or certified remediation specialist shall not knowingly commit bribery of a public servant as proscribed in A.R.S. § 31-2602, knowingly commit commercial bribery as proscribed in A.R.S. § 13-2605 or violate any federal statute concerning bribery.
 - 5-4. A registrant or certified remediation specialist shall comply with state, municipal and county laws, codes, ordinances, and regulations pertaining to the registrant's or certified remediation specialist's ~~professional~~ practice.
 - 6-5. A registrant or certified remediation specialist shall not violate any state or federal criminal statute involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery or breach of fiduciary duty, ~~where if~~ if the violation is reasonably related to the registrant's or certified remediation specialist's area of practice.
 - 7-6. A registrant or certified remediation specialist shall apply the technical knowledge and skill ~~which that~~ that would be applied by other qualified registrants or certified remediation specialists who practice the same profession in the same area and at the same time.
 - 8-7. A registrant or certified remediation specialist shall not accept an assignment ~~where if~~ if the duty to a client or the public would conflict with the registrant's or certified remediation specialist's personal interest or the interest of another client without full disclosure of all material facts of the conflict to each person who might be related to or affected by the project or engagement in question.
 - 9-8. A registrant or certified remediation specialist shall not accept compensation for services related to the same project or professional engagement from more than one party without making full disclosure to all ~~such~~ parties and obtaining the express written consent of all parties involved.

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- ~~10.9.~~ A certified remediation specialist ~~Except as provided in Subsections (11) and (12) of this Section, a registrant shall not accept any remediation professional engagement or assignment outside the specialist's area of certification. registrant's professional registration category unless:~~
- ~~a. The registrant is qualified by education, technical knowledge or experience to perform such work; and~~
 - ~~b. Such work is exempt under A.R.S. § 32-143.~~
- ~~11.~~ A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge or experience to perform such engagements or assignments.
- ~~12.~~ Except as otherwise provided by law, code, ordinance or regulation, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services for which the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
- ~~13.~~ 10. A registrant or certified remediation specialist shall make full disclosure to all parties concerning:
- ~~a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except for actual and substantial technical assistance in preparing the proposal; or~~
 - ~~b. Any monetary, financial, or beneficial interest the registrant or certified remediation specialist may hold in a contracting firm or other entity providing goods or services, other than the registrant's or certified remediation specialist's professional services, to a project or engagement.~~
- ~~14.~~ 11. A registrant or certified remediation specialist shall not solicit, receive, or accept compensation from material, equipment, or other product or service suppliers for specifying or endorsing their products, goods, or services to any client or other person without full written disclosure to all parties.
- ~~15.~~ 12. If a registrant's or certified remediation specialist's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant or certified remediation specialist shall immediately notify the responsible party, appropriate building official, or agency, and the Board of the specific nature of the public threat.
- ~~16.~~ 13. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant or certified remediation specialist shall render decisions impartially and without bias to any party.
- ~~17.~~ 14. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the "Minimum Standards for Arizona Land Boundary Surveys" as adopted by the Board August 19, 1994, April 12, 2001 Arizona Professional Lands Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, as adopted by the Board on June 15, 2001, the provisions of which are incorporated herein in this subsection by reference and on file with the Office of the Secretary of State. This incorporation by reference does not include any later amendments or editions.
- ~~18.~~ A registrant who is designated as a responsible registrant under A.R.S. § 32-141(B) shall be responsible for the firm or corporation's compliance with the Board's statutes and rules, and shall be responsible for non-registrant employees' compliance with the Board's statutes and rules in the performance of the non-registrant employee's duties for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of the Board's statutes or rules that are committed by the non-registrant employee, or firm or corporation.
- ~~19.~~ 15. A registrant or certified remediation specialist shall comply with any subpoena issued by the Board or its designated administrative law judge.
- ~~16.~~ A registrant or certified remediation specialist shall update their address, phone number, and facsimile number of record with the Board within 30 days of the date of any change.

B. All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee.
2. Except as provided in subsections (3) and (4), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
 - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
 - b. The work is exempt under A.R.S. § 32-143.
3. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
4. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services for which the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.

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5. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.

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TITLE 9. HEALTH SERVICES

CHAPTER 33. DEPARTMENT OF HEALTH SERVICES - GROUP HOMES FOR INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED

PREAMBLE

1. Sections Affected

Chapter 33
Article 1
R9-33-101
R9-33-102
R9-33-103
R9-33-104
R9-33-105
R9-33-106
R9-33-107
Article 2
R9-33-201
R9-33-202
R9-33-203
R9-33-204
R9-33-205
R9-33-206
R9-33-207

Rulemaking Action

New Chapter
New Article
New Section
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2. The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-136(F)

Implementing statutes: A.R.S. §§ 36-132(A)(21), 36-591(B), 41-1072 through 41-1079

3. The effective date of the rules:

February 11, 2002

4. A list of all previous notices appearing in the Register addressing the rulemaking:

Notice of Rulemaking Docket Opening: 6 A.A.R. 1806, May 19, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 4715, December 22, 2000

Notice of Supplemental Proposed Rulemaking: 7 A.A.R. 2812, July 6, 2001

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Kathleen Phillips, Rules Administrator

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or

Name: Laura Hartgroves, Rules Analyst

Address: Department of Health Services
Division of Assurance and Licensure Services
1647 East Morten Avenue
Phoenix, AZ 85020

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Telephone: (602) 674-4257
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or
Name: Richard Littler, Program Manager
Address: Department of Health Services
1647 E. Morten Avenue, Suite 170
Phoenix, AZ 85020
Telephone: (602) 674-9775
Fax: (602) 861-0491

6. An explanation of the rulemaking, including the agency's reasons for initiating the rulemaking:

The rules implement A.R.S. §§ 36-132(A)(21) and 36-591(B) which requires the Arizona Department of Health Services (ADHS) to license and regulate the health and safety of the facility of group homes for developmentally disabled individuals. Before 1997, the Department of Economic Security (DES) licensed and regulated the health and safety of the facility of group homes for individuals who are developmentally disabled and contracted for services with licensed group homes. In 1997, the Arizona Legislature transferred the licensing and regulation of the facility of group homes for individuals who are developmentally disabled from DES to ADHS. After the 1997 legislation, ADHS is required to license and regulate the facility of group homes for individuals who are developmentally disabled and DES is required to contract for services with licensed group homes. While ADHS has been licensing and regulating the health and safety of the facility of group homes for individuals who are developmentally disabled since 1997, it has done so using portions of DES rules which were in place before the licensing function was transferred to ADHS. The ADHS rules establish requirements for the licensure and regulation of the health and safety of the facility of group homes for individuals who are developmentally disabled under ADHS and include time-frames as required by A.R.S. Title 41, Chapter 6, Article 7.1.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rules and where the public may obtain or review the study, all data underlying each study, any analysis to the study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

There will be costs and benefits associated with implementing A.R.S. § 36-132(A)(21), which requires that ADHS license and regulate the health and safety of group homes for individuals who are developmentally disabled. ADHS will incur moderate one-time initial costs of approximately \$1,275.00 copying and mailing the new rules, updating forms, answering questions from operators of group homes and other stakeholders, and preparing to implement licensure time-frame rules. ADHS will also incur moderate annual ongoing costs of approximately \$5,077.00 complying with time-frame rules and verifying that a group home is accessible to and usable by a resident with a sensory, mobility, or other physical impairment.

DES will incur minimal one-time initial costs answering questions from operators of group homes and other stakeholders.

Owners and operators of group homes will incur minimal initial, one-time administrative costs updating policies, procedures, and forms. Owners or operators of approximately 10 group homes will incur minimal costs, of approximately \$900.00 each, to maintain a group home at a temperature between 65-85° F.

Costs incurred by ADHS, DES, and owners and operators of group homes are offset by the benefits that consumers and operators of group homes will realize as a result of the rules. Establishing rules for the licensure and regulation of group homes within ADHS is consistent with Arizona law and current practice, and provides consistency and clarity for state agencies, owners and operators of group homes, and residents and residents' families. The additional requirements for temperature ranges in a group home has a direct and positive impact upon residents by preventing threats to life, health, and safety resulting from exposure to extreme temperatures. Additionally, ADHS's verification that accommodations to premises were completed, as recommended by DES, ensures that a resident who has a sensory, mobility, or other physical impairment has full access and use of the group home.

10. A description of the changes between the proposed rules, including supplemental notices, and final notices (if applicable):

A Notice of Rulemaking Docket Opening was published on May 19, 2000. A Notice of Proposed Rulemaking was published on December 22, 2000. ADHS held oral proceedings on the proposed rules on February 7, 8, and 9, 2001. ADHS received a number of comments, including a request to add requirements to the rules that ensure that a group

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home is accessible to and usable by a resident who has a sensory, mobility, or other physical impairment. ADHS made changes to address these comments and published a Notice of Supplemental Proposed Rulemaking on July 6, 2001.

ADHS held an oral proceeding on the supplemental proposed rules on August 15, 2001, and received written and oral comments in support of the requirements added to ensure that a facility is accessible to and usable by a resident with a sensory, mobility, or other physical impairment. In addition, ADHS received one other oral comment and one written comment on the supplemental proposed rules. After reviewing these comments and conducting an internal review of the proposed rules, ADHS made the following changes:

The Chapter containing the rules is changed from Chapter 32 to Chapter 33, as requested by the Office of the Secretary of State.

In R9-33-101, ADHS removes the definitions of “Fire risk profile” and “Self-preservation” because the terms are no longer used in the Chapter. The definition of “Resident” is clarified by specifying that, based upon documentation, a resident lives in a group home. The definition of “Spa” is added.

In R9-33-103(A), ADHS reduces the 60-day time period for an applicant to submit a completed application to ADHS to 30 days to minimize the costs between the time that a building is obtained for use as a group home and the time that ADHS will initially license the building as a group home.

In R9-33-103(B), ADHS adds “applicable federal” laws and rules to state laws and rules that allow an official of ADHS access to a group home.

In R9-33-104(B), ADHS clarifies that ADHS shall renew a license to operate a group home if, after conducting an onsite inspection, ADHS determines that the applicant is in compliance with the applicable requirements in the Chapter.

In R9-33-106(B), ADHS establishes that a deficiency is corrected within 30 days from the date of the plan of correction to ensure that the health and safety of the group home is maintained.

In R9-33-107(A)(4), ADHS establishes that ADHS may deny, revoke, or suspend a license to operate a group home if the nature or number, instead of nature and number, of violations pose a direct threat to the life, health, or safety of a resident.

In R9-33-201(A)(1)(d), ADHS clarifies that an emergency plan includes procedures for evacuating each resident, including a resident who may have a mobility, sensory, or other physical impairment.

In R9-33-201(A)(2), ADHS requires that the emergency plan be available and accessible to residents.

In R9-33-201(B)(2), ADHS clarifies the type of local emergency response team that would be notified of the group home’s address, by adding, “such as the local fire department.”

In R9-33-201(C)(4), ADHS requires that a telephone be available and accessible to residents and that only the address of the group home and telephone number for 911 or other emergency response team be posted by the telephone.

In R9-33-202(D), ADHS clarifies that smoke detectors are capable of alerting all residents in the facility, including a resident with a mobility or sensory impairment.

ADHS removes requirements, previously contained in R9-33-202(F) of the proposed rules, for a fire risk profile because the fire risk profile is contained in DES rules and is used by DES for the appropriate placement of residents in group homes.

In R9-33-202(A) and (G), ADHS clarifies that ADHS will issue a “level 1” license and a “level 2” license based upon the type and amount of fire safety and fire suppression devices in the group home. In this Section, the term “evacuation” replaces “egress” to ensure consistency of terms throughout the rules.

In R9-33-204, ADHS adds a Section requiring that a group home is in compliance with applicable portions of federal and state disability laws and requires a group home to make modifications to the premises, and provide documentation of modifications made, to ensure that the group home is accessible to and usable by a resident with a mobility, sensory, or other physical impairment.

In R9-33-205(A)(1), ADHS permits garbage or refuse to be stored in containers without lids or in sealable plastic bags to allow the group home to be more home-like and less like an institutional setting.

In R9-33-207(A)(3), ADHS prohibits firearms or ammunition at the facility to ensure the safety of individuals who are developmentally disabled.

In R9-33-207(D)(1), ADHS requires that if a resident is under the age of six, a spa is enclosed by a fence.

The Department has made several grammatical, stylistic, and verbiage changes based upon the suggestions of the Governor’s Regulatory Review Council staff to make the rules more clear, concise, and understandable.

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11. A summary of the principal comments and the agency response to them:

The following tables summarize the comments received by ADHS in each comment period and provide ADHS's responses to the comments.

A. First Comment Period

Public Comment	ADHS Response
A provider that operates group homes requested that the time period for an applicant to submit an initial application be reduced from 60 days to 30 days because the 60-day time period could impose an unnecessary expense upon a provider who must secure a home but keep it empty for 60 days.	In R9-33-103(A), ADHS reduces the time period for an applicant to submit an initial application to ADHS to 30 days before the anticipated date of operation.
A provider that operates group homes stated that her group home uses evaporative coolers and would be unable to meet the new temperature range requirements in the rules.	ADHS is not making changes in response to this comment. Establishing a temperature range in a group home is necessary to ensure the health and safety of residents and is a requirement in rules in this and other states that provide services for individuals with similar needs. Individuals who are developmentally disabled may require medications that can be negatively impacted by extreme temperatures. Additionally, individuals who are developmentally disabled may, as a result of their disability, be unable to communicate their discomfort or needs to caregivers.
A representative from an advocacy organization requested that ADHS clarify that a renewal license is issued after an onsite inspection.	In R9-33-104(B)(1), ADHS clarifies that a renewal license is issued after an onsite inspection is conducted.
A representative from an advocacy organization requested that ADHS add requirements to the rules to ensure that the premises be accessible to and usable by an individual with a mobility or communication impairment, as is required by the Americans with Disabilities Act and the 1973 Rehabilitation Act. In addition, ADHS was asked to require the emergency plan to include procedures for evacuating all residents, regardless of their disability, that the telephone be accessible to residents, and that the smoke detector be capable of alerting all residents regardless of their disability.	ADHS agrees and makes the following changes: In R9-33-103(B), ADHS adds "applicable federal" laws and rules to state laws and rules that allow an official of ADHS access to a group home. In R9-33-201(A)(1)(d), ADHS adds requirements to the emergency plan to include procedures for evacuating all residents, including residents who may have a mobility, sensory, or other physical impairment. In R9-33-201(C)(4), ADHS requires that the telephone be accessible to residents. In R9-33-202(D), ADHS requires that a smoke detector is capable of alerting all residents regardless of their disability. In R9-33-204, ADHS adds a Section requiring that the group home comply with applicable federal and state disability laws and make modifications to the premises, and provide documentation of those modifications, to ensure that the group home is accessible to and usable by residents who may have a mobility, sensory, or other physical impairment.
A group home provider requested that ADHS clarify the fire risk profile.	In R9-33-202(F), ADHS removes from the rules requirements for and references to the fire risk profile. The fire risk profile is a requirement in rules under DES and is used by DES to appropriately place residents in group homes. In R9-33-202, ADHS establishes objective requirements for a "level 1" and a "level 2" group home based upon the type and amount of fire suppression mechanisms in the group home.
A group home provider stated that requiring each garbage can to have a lid detracts from the home-like environment of a group home and makes the group home feel more institutional.	In R9-33-205(A)(1), ADHS removes the requirement that containers used to store garbage must have lids and also allows garbage to be stored in sealable plastic bags.
A representative from an advocacy organization requested that ADHS establish a time period for the correction of a deficiency.	In R9-33-106(B), ADHS establishes that a deficiency listed on a plan of correction is corrected within 30 days from the date of the plan of correction.

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A representative of an advocacy organization requested that ADHS base enforcement action upon the nature <u>or</u> number of violations, rather than the nature <u>and</u> number of violations.	In R9-33-107(A)(4), ADHS establishes that ADHS may deny, revoke, or suspend a license to operate a group home if the nature <u>or</u> number of violations pose a direct risk to the life, health, or safety of a resident.
A group home provider requested that “health emergencies” be added to list of emergency procedures addressed in the written plan in R9-33-201(A).	ADHS agrees that health emergencies are an important part of a written plan for emergencies. However, that requirement is already addressed in DES rules for group homes, R6-6-809(C). To avoid duplication of requirements, the ADHS is not changing the rule.
A group home provider requested that evacuation paths be posted in the group home.	In R9-33-201(A)(2), ADHS requires that the emergency plan, which includes routes of evacuation, be accessible and available to staff and each resident. ADHS believes that if the plan is accessible and available, the provider has greater flexibility in meeting the outcome of the rule and creating a home-like, less institutional environment.
A representative of an advocacy organization requested that ADHS include a requirement for notification of the appropriate entity when abuse has occurred or is suspected to have occurred.	While ADHS supports timely notification of abuse to government agencies charged with receiving and investigating such complaints, these requirements are already contained in DES rules for group homes in R6-6-809(D). To avoid duplication of requirements, the ADHS is not changing the rule.
A group home provider suggested that the time limit in the fire-risk profile was too short.	In R9-33-202(F), ADHS removes references to the fire-risk profile that is contained in DES rules and instead, establishes objective criteria for “level 1” and “level 2” group homes based upon the type and amount of fire suppression mechanisms. This is consistent with ADHS current practice.
A group home provider stated that the term “egress” was vague and requested clarification.	In R9-33-202(G)(1)(b), ADHS replaces the term “egress” with “evacuation” to ensure that consistent terms are used throughout the rules.
A representative of an advocacy organization requested that the telephone requirements in R9-33-201(C)(4) require that the telephone be accessible to residents and located in a private area.	In R9-33-201(C)(4), ADHS adds a requirement that the telephone be accessible to each resident. DES rules, R6-6-804(8), already address private telephone conversations. To avoid duplication of requirements, ADHS is not changing the rule to address private telephone conversations.
A group home provider requested that group homes be required to have a working stove or oven so that microwave ovens could not be exclusively used to prepare food.	ADHS is not aware of any data suggesting that microwave ovens, if properly used, present a health or safety risk. ADHS is not making changes in response to this comment.
A group home provider requested that tobacco smoke be added to the list of prohibited odors.	DES rules for group homes require that a policy and procedure be developed and implemented that addresses smoking and takes the rights of all residents into account (R6-6-809(E)). An ADHS rule prohibiting tobacco odors may be inconsistent with the DES rule; therefore ADHS is not making changes in response to this comment.
A group home provider requested that vehicles be required to contain a fire extinguisher and water.	The manufacturer’s instructions on fire extinguishers recommends that fire extinguishers are not stored in a temperature above 120 degrees F. In most parts of this state, during most of the year, a vehicle’s internal temperature could be above 120 degrees F. ADHS, in conjunction with DES, believe that requirements for water in vehicles are addressed in DES rules for individualized health care and safety needs (R6-6-806(C)), therefore ADHS is not making changes in response to this comment.
A group home provider requested that a resident’s allergy to latex gloves be documented at the group home.	R9-33-207(A)(8)(g) does not specify that the gloves in the first aid kit are latex gloves. Additionally, DES rules (R6-6-806(B)(8)) already require documentation of allergies. To avoid duplication of requirements, ADHS is not making changes in response to this comment.

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A group home provider requested that requirements for the fingerprinting of staff be added to the rules.	DES rules (R6-6-703(D) and (E) and R6-6-708) address staff fingerprinting. To avoid duplication of requirements, ADHS is not making changes in response to this comment.
A group home provider requested that requirements be added to the rules to ensure that a licensee has a reputable and honest character and related education and business experience.	DES rules (R6-6-705(A)(2)) contain requirements for a licensee's character and qualifications. To avoid duplication of requirements, ADHS is not making changes in response to this comment.
A group home provider requested that requirements for staff training, including training requirements for drivers, be included in the rules.	DES rules (R6-6-808 (C) through (J)) contain requirements for staff training. DES requires that staff have "knowledge, skills, and experience sufficient to carry out the requirements of the position" which could include driving, if that were a requirement of the position. To avoid duplication of requirements, ADHS is not making changes in response to this comment.

B. Second Comment Period

A representative of an advocacy organization stated that the substantive changes are all very appropriate and warranted.	ADHS appreciates the support.
A representative of an advocacy organization requested that notification of the emergency response team in R9-33-201(B)(2) be clarified.	ADHS clarifies the requirement by adding, "such as the local fire department."
A representative of an advocacy organization requested that R9-33-207(A)(3) be modified to ensure that firearms or ammunition are never maintained or brought to a group home.	ADHS changes R9-33-207(A)(3) to ensure that there are no firearms or ammunition at the facility.
A representative of an advocacy organization thanked ADHS for adding requirements for accessible and usable facilities and discussed the importance of such requirements.	ADHS appreciates the support.
A group home provider recommended that the definition of "applicant" include only one, rather than two corporate officers.	ADHS is not making changes as a result of this comment. ADHS developed the licensure provisions for group homes, contained in Article 1 of the rules, based upon the licensure provisions for health care institutions. While group homes are not considered health care institutions, ADHS believes it is desirable to have consistent licensure provisions across different licensed entities. The requirement for two corporate officers is found in licensure provisions for health care institutions (A.R.S. § 36-422(B)(2)) and was carried over to licensure provisions for group homes.
A group home provider recommended that the definition of "resident" be clarified.	ADHS clarifies the definition of "resident" by indicating that, based upon documentation, a resident lives at the group home.
A group home provider recommended that the definition of "self-preservation" be clarified.	ADHS removes requirements related to the fire risk profile, which included references to the term "self-preservation." The term "self-preservation" is no longer used in the rules; ADHS removes the definition of "self-preservation."
A group home provider expressed dissatisfaction that accredited group homes may be inspected at different intervals than group homes that are not accredited.	ADHS is not making changes as a result of the comment. A.R.S. § 36-132(A)(21) establishes provisions for accredited group homes, including the period of accreditation.

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A group home provider requested clarification of R9-33-103(C)(1) where the overall time-frame may be extended by 25%.	ADHS is not making changes as a result of this comment. The overall time-frame includes both the administrative review time-frame and the substantive review time-frame.
A group home provider requested that the time-period for submitting a renewal application and the time period for submitting an initial application be consistent.	ADHS is not making changes as a result of this comment. During the first comment period ADHS was requested to shorten the time period for submitting an initial application from 60 to 30 days so that providers would not have the expense of maintaining a vacant group home an additional 30 days. ADHS shortened the initial application time period to 30 days in response to that comment. Such an economic impact would not apply to a renewal application and the 60-day time period for renewal allows ADHS staff additional and needed time to manage and schedule renewal inspections.
A group home provider requested that the time period for correcting a deficiency be 30 days from the date that the provider agreed to the plan of correction, instead of 30 days from the date of the plan of correction.	ADHS is not making changes as a result of this comment. ADHS believes that 30 days from the date of the plan of correction is adequate time to correct a deficiency while still ensuring that the health and safety of the group home is maintained.
A group home provider requested that, in R9-33-201(C)(4), only the number of 911 and the group home address be posted.	ADHS agrees that posting the telephone numbers for the fire department, emergency personnel, and police department is duplicative and excessive. ADHS removes the posting of these telephone numbers and now requires the posting of only the telephone number of 911 or other local emergency response team and the group home address.
A group home provider asked whether ADHS inspectors would be educated on all applicable federal and state disability laws.	ADHS is not making changes as a result of this comment. Group homes receive federal and state dollars to provide services to individuals who are developmentally disabled. As a result of the receipt of those federal and state dollars, the group home is required to be in compliance with applicable federal and state disability laws. ADHS staff have worked very closely with the Arizona Center for Disability Law, the federally designated advocacy and protection agency, in developing these requirements and staff have received, and will continue to receive, training on the applicable federal and state disability laws.
A group home provider requested that the fire risk profile be used by ADHS staff to determine whether modifications to the premises are needed to ensure that the group home is accessible to and usable by an individual with a mobility, sensory, or other physical disability.	ADHS is not making changes as a result of this comment. The fire risk profile contained in DES rules is specific to an individual's ability to evacuate the group home and may not capture the individual's ability to have full use of the group home. For instance, an individual in a wheel chair may be able to evacuate the facility through the front or back door in a timely manner. However that information may not determine whether the bathroom doors are wide enough to accommodate a wheel chair and allow that individual full use of the group home.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was the rule previously adopted as an emergency rule?

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 33. DEPARTMENT OF HEALTH SERVICES - GROUP HOMES FOR INDIVIDUALS
WHO ARE DEVELOPMENTALLY DISABLED**

ARTICLE 1. LICENSURE REQUIREMENTS

Section

- R9-33-101. Definitions
- R9-33-102. Requirement for Licensure
- R9-33-103. Application and Issuance of License
- R9-33-104. License Renewal
- R9-33-105. Changes Affecting a License
- R9-33-106. Investigation of Complaints
- R9-33-107. Denial, Revocation, or Suspension of a License

ARTICLE 2. GROUP HOME REQUIREMENTS

Section

- R9-33-201. Emergency Procedures and Evacuation Drills
- R9-33-202. Fire Safety Requirements
- R9-33-203. Safe and Functioning Systems
- R9-33-204. Accessible and Usable Facilities
- R9-33-205. Clean and Sanitary Conditions
- R9-33-206. Vehicle Safety
- R9-33-207. Hazards and Dangers

ARTICLE 1. LICENSURE REQUIREMENTS

R9-33-101. Definitions

The following definitions apply in this Chapter unless otherwise specified:

1. "Accredited" means accredited by a nationally recognized accreditation organization.
2. "Applicant" means the following if requesting a group home license:
 - a. An individual, if a sole proprietorship;
 - b. Any two of the corporation's officers, if a corporation;
 - c. The managing partner, if a partnership or limited liability partnership; or
 - d. The designated manager, or if no manager is designated, any two members of a limited liability company, if a limited liability company.
3. "Application packet" means the forms, documents, and additional information the Department requires to be submitted by an applicant.
4. "Day" means a calendar day.
5. "Department" means the Arizona Department of Health Services.
6. "Developmental disability" means the same as defined in A.R.S. § 36-551.
7. "Division" means the Division of Developmental Disabilities in the Arizona Department of Economic Security.
8. "Documentation" means written evidence.
9. "Facility" means a building or buildings used as a group home.
10. "Group home" means a residential setting for not more than six persons with developmental disabilities that is operated by a service provider under contract with the division and that provides, in a shared living environment, room and board and daily habilitation. Group home does not include an adult developmental home, a child developmental foster home, secure setting or an intermediate care facility for the mentally retarded.
11. "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of his person and environment and to raise the level of his physical, mental and social efficiency.
12. "Hazard" means a condition or situation that may result in physical injury to a resident.
13. "Licensee" means the individual, partnership, or corporation approved by the Department to operate a group home.
14. "Premises" means:
 - a. A facility; and
 - b. The grounds surrounding the facility used for operating a group home that are owned, leased, or controlled by the licensee.
15. "Private residential swimming pool" means the same as defined in A.A.C. R18-5-201.

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16. "Resident" means an individual who is accepted by a licensee to live at the group home.
17. "Service provider" means a person or agency that provides services to clients pursuant to a contract or service agreement with the division.
18. "Spa" means the same as defined in A.A.C. R18-5-201.
19. "Staff" or "staff member" means an employee of a group home.
20. "Supervision" means the process by which the activities of an individual with developmental disabilities are directed, influenced or monitored.

R9-33-102. Requirement for Licensure

An applicant shall obtain a license to operate a group home from the Department before providing supervision or habilitation to an individual with a developmental disability in a group home. A license to operate a group home is valid for the:

1. Address indicated on the license.
2. Name of the licensee indicated on the license, and
3. Period of time indicated on the license.

R9-33-103. Application and Issuance of License

A. At least 30 days before the anticipated date of opening a group home, an applicant shall submit to the Department a completed application packet that contains:

1. An application form provided by the Department that includes:
 - a. The applicant's name, address, telephone number, facsimile number, and electronic-mail address, if applicable;
 - b. The proposed group home's name, address, telephone number, facsimile number, and electronic mail address, if applicable;
 - c. Whether the proposed group home is accredited by a nationally recognized accreditation organization;
 - d. Whether the applicant is a current service provider or intends to become a service provider; and
 - e. The applicant's signature; and
2. A copy of the applicant's accreditation report issued by a nationally recognized accreditation organization, if applicable.

B. To ensure compliance with applicable federal and state laws, rules, or local ordinances, an applicant or licensee shall ensure that an official of the Department is allowed immediate access to the premises, a resident, record, or vehicle used to transport a resident, according to A.R.S. § 41-1009.

C. For Department licensure of a group home:

1. The overall time-frame described in A.R.S. § 41-1072(2) is 120 days. The applicant and the Department may agree in writing to extend the overall time-frame. The substantive review time-frame may not be extended by more than 25% of the overall time-frame;
2. The administrative completeness review described in A.R.S. § 41-1072(1) is 60 days and begins on the date the Department receives an application packet;
 - a. If any of the documents are missing or if information in the documents is deficient, the Department shall send to the applicant a written notice of incompleteness that states each deficiency and the information or documents needed to complete the application packet. The 60 day time-frame for the Department to finish the administrative completeness review is suspended from the date the Department provides the notice of incompleteness to the applicant until the date the Department receives the required information or missing document;
 - b. If all of the documents are submitted and the information on the documents is complete, the Department shall provide a written notice of administrative completeness to the applicant. The notice shall include the date and time of the Department's inspection of the group home;
 - c. If the missing or deficient documents or information are not submitted within 120 days from the date of notice of incompleteness, the Department shall consider the application withdrawn;
 - d. If the Department grants a license during the time provided to assess administrative completeness, the Department shall not issue a separate notice of administrative completeness;
3. The substantive review time-frame described in A.R.S. § 41-1072(3) is 60 days and begins on the date the Department provides written notice of administrative completeness to the applicant;
 - a. As part of the substantive review, the Department shall conduct an onsite inspection of the group home;
 - b. During the substantive review time-frame, the Department may make one comprehensive written request for additional information or documents;
 - c. The time-frame for the Department to complete the substantive review is suspended from the postmark date of the comprehensive written request until the Department receives the additional information or documents;
 - d. The applicant shall submit to the Department the information or documents identified in the comprehensive written request within 30 days of receipt of the comprehensive written request;
 - e. If an applicant meets the requirements of this Section and Chapter, the Department shall issue to the applicant:
 - i. A two-year regular license to operate a group home; or
 - ii. If the applicant is accredited, a regular license to operate a group home for the duration of the accreditation

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- period, not to exceed three years;
- f. The Department shall provide the applicant with a written notice of denial if:
 - i. The applicant does not submit the additional information or documents within the time-frame in subsection (C)(3)(d); or
 - ii. Upon receipt of the additional information or documents from the applicant, the Department determines that the applicant does not meet the requirements of this Section and Chapter; and
 - g. An applicant may appeal the Department's determination according to A.R.S. Title 41, Chapter 6.

R9-33-104. License Renewal

- A.** A licensee shall submit to the Department a completed application for renewal of a license to operate a group home at least 60 days before the expiration date indicated on the license. An application shall contain the information in R9-33-103(A).
- B.** The Department shall renew a regular license to operate a group home:
 - 1. If, after conducting an onsite inspection, the Department determines that the licensee is in compliance with the applicable requirements in this Chapter; and
 - 2. According to the time-frames in R9-33-103(C).

R9-33-105. Changes Affecting a License

A licensee shall notify the Department in writing at least 30 days before the effective date of termination of:

- 1. Operation of a group home; or
- 2. A service provider contract with the Division.

R9-33-106. Investigation of Complaints

- A.** Upon receipt of a complaint or if there is a reasonable cause to believe that a group home is not in compliance with the Department's applicable laws and rules, the Department shall:
 - 1. Investigate the complaint within 30 days of receipt of the complaint;
 - 2. Develop a written report that:
 - a. Indicates whether the complaint is substantiated;
 - b. Identifies the law or rule being violated, if applicable;
 - c. Contains a plan of correction, acceptable to the Department, for the correction of a deficiency; and
 - d. Contains the signature of the licensee, indicating that the licensee agrees to carry out the plan of correction;
 - 3. Provide the licensee with the written report in subsection (A)(2); and
 - 4. Notify the Division of the outcome of the investigation.
- B.** A licensee shall ensure that a deficiency listed on a plan of correction is corrected within 30 days from the date of the plan of correction.

R9-33-107. Denial, Revocation, or Suspension of a License

- A.** The Department may deny an application or revoke or suspend a license to operate a group home if:
 - 1. An applicant or licensee does not meet the application requirements contained in R9-33-103;
 - 2. A licensee is not a service provider;
 - 3. A licensee does not correct the deficiencies according to the plan of correction contained in R9-33-106 by the time stated in the plan of correction; or
 - 4. The nature or number of violations revealed by any type of inspection or investigation of a group home poses a direct risk to the life, health, or safety of a resident.
- B.** An applicant or licensee may appeal the Department's determination in subsection (A) according to A.R.S. Title 41, Chapter 6, Article 10.
- C.** The Department shall immediately notify the Division when an application is denied and when a license to operate a group home is suspended or revoked.

ARTICLE 2. GROUP HOME REQUIREMENTS

R9-33-201. Emergency Procedures and Evacuation Drills

- A.** A licensee shall ensure that a written plan for emergencies is developed and implemented. The plan shall be available and accessible to staff and each resident at the facility. The plan shall include:
 - 1. Procedures for responding to a fire, emergency, and severe weather conditions that include:
 - a. Routes of evacuation, location of firefighting equipment, and evacuation devices identified on a floor plan of the facility;
 - b. Instructions on the use of fire alarm systems, firefighting equipment, and evacuation devices;
 - c. Procedures for evacuating each resident, including a resident who is not capable of self-preservation or who has a mobility, sensory, or other physical impairment; and
 - d. Procedures for notifying an emergency response team, law enforcement, and the licensee or the licensee's designee; and

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2. Procedures for when a resident is missing from the premises.
- B.** A licensee shall ensure that:
 1. The facility's street address is posted and visible from the street; or
 2. The local emergency response team, such as the local fire department, is notified of the location of the facility in writing at least once every 12 months. The licensee shall make the written notification available for review at the facility for at least two years from the date of the notification.
- C.** A licensee shall ensure that:
 1. An evacuation drill that includes all residents is conducted at least once every six months on each shift. The licensee shall make documentation of an evacuation drill available for review at the facility for at least two years from the date of the evacuation drill that includes:
 - a. The date and time of the evacuation drill;
 - b. The length of time to evacuate all residents from the facility;
 - c. A description of the evacuation drill; and
 - d. A corrective action plan, if the length of time to evacuate all residents from the facility exceeds three minutes;
 2. All stairways, hallways, walkways, and other routes of evacuation are free of any obstacle that may prevent evacuation of a resident in an emergency;
 3. If a window or door contains locks, bars, grills, or other devices that obstruct evacuation, each device contains a release mechanism that is operable from the inside of the facility and that does not require the use of a key, special knowledge, or special effort; and
 4. Each facility contains a working telephone that is available and accessible to staff and each resident. The licensee shall post current telephone numbers by the telephone for:
 - a. 911 or other local emergency response team; and
 - b. The address of the group home.

R9-33-202. Fire Safety Requirements

- A.** The Department shall issue to an applicant or a licensee:
 1. A level 1 license if the group home meets the requirements in R9-33-202(B) through R9-33-202(F); and
 2. A level 2 license if the group home meets the requirements in R9-33-202(B) through R9-33-202(G).
- B.** A licensee shall ensure that the facility is in compliance with all applicable state and local fire safety regulations and that:
 1. A fire inspection is conducted at least once every 12 months by the local fire department, the Department, or an entity authorized by the Department;
 2. Any repair or correction stated in the fire inspection report is made or corrected according to the requirements and time in the fire inspection report; and
 3. The fire inspection report is available for review at the facility for at least two years from the date of the inspection.
- C.** A licensee shall ensure that a working, portable, all-purpose fire extinguisher with at least a 2A-10-BC rating by the Underwriter's Laboratories as described in Publication 10 of the National Fire Code, incorporated by reference in A.A.C. R9-1-412, is installed and maintained in the facility as prescribed by the manufacturer or the fire authority having jurisdiction. A licensee shall ensure that a fire extinguisher is:
 1. Serviced at least once every 12 months or as recommended by the manufacturer; and
 2. Tagged specifying:
 - a. The date of purchase or the date of recharging, whichever is more recent; and
 - b. The name of the organization performing the work, if applicable.
- D.** A licensee shall ensure that smoke detectors are:
 1. Working;
 2. Capable of alerting all residents in the facility, including a resident with a mobility or sensory impairment;
 3. Installed according to the manufacturer's instructions; and
 4. Located in at least the following areas:
 - a. Each bedroom;
 - b. Each room or hallway adjacent to a bedroom, except a bathroom or a laundry room; and
 - c. Each room or hallway adjacent to the kitchen, except a bathroom, a pantry, or a laundry room.
- E.** A licensee shall ensure that each bedroom has at least one openable window or door to the outside for use as an emergency exit.
- F.** A licensee shall ensure that:
 1. A usable fireplace is covered by a protective screen or covering at all times; and
 2. Combustible or flammable materials are not stored within three feet of a furnace, heater, or water heater.
- G.** A licensee of a level 2 group home shall ensure that:
 1. The facility contains an emergency lighting system that:
 - a. Works without in-house electrical power;
 - b. Illuminates the path of evacuation;

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- c. Is inspected at least once every 12 months by the manufacturer or an entity that installs and repairs emergency lighting systems; and
- 2. Documentation of an emergency lighting system inspection is available for Department review at the facility for two years from the date of the inspection and includes:
 - a. The date of the inspection;
 - b. The name of the entity performing the inspection;
 - c. A tag on the emergency lighting system or a written report of the results of the inspection; and
 - d. A description of any repairs made to the system as a result of the inspection; and
- 3. The facility has one of the following:
 - a. At least two staff members on duty at the facility at all times and the facility has an early-warning fire detection system that:
 - i. Is hard-wired with battery back-up;
 - ii. Sounds every alarm in the facility when smoke is detected;
 - iii. Is installed in each bedroom, each room or each hallway adjacent to a bedroom, and each room or each hallway adjacent to the kitchen; and
 - iv. Is inspected at least once every 12 months by the manufacturer or by an entity that installs and repairs early-warning fire detection systems. The licensee shall make available the documentation of the inspection at the facility for review for at least two years from the date of the inspection and includes the information in subsection (G)(2); or
 - b. An automatic sprinkler system installed according to the applicable standard incorporated by reference in A.A.C. R9-1-412 and installed according to NFPA 13, NFPA 13R, or NFPA 13D, as applicable, that:
 - i. Covers every room in the facility; and
 - ii. Is inspected at least once every 12 months. The licensee shall make available the documentation of the inspection at the facility for review for at least two years from the date of the inspection and includes the information in subsection (G)(2).

R9-33-203. Safe and Functioning Systems

A. A licensee shall ensure that:

- 1. A method of heating and cooling maintains the facility between 65° F and 85° F. in areas of the facility occupied by residents;
- 2. Ventilation is provided by an openable window, air conditioning, or other mechanical device;
- 3. Working, safe appliances for cooling and cooking food are provided in the facility; and
- 4. Hot water temperatures in the facility are maintained between 95 ° F. and 120° F.

B. A licensee shall ensure that:

- 1. Electrical lighting is contained in each room in the facility; and
- 2. Electrical equipment in the facility is safe and in working order.

C. A licensee shall ensure that:

- 1. A facility contains a safe, working plumbing and sewage system;
- 2. If a non-municipal sewage system is used, the sewage system is in working order and free of visible leakage; and
- 3. Water is standing only in an area designated to hold standing water.

R9-33-204. Accessible and Usable Facilities

A licensee shall ensure that:

- 1. A group home is in compliance with all applicable federal and state disability laws; and
- 2. If a group home has a resident with a mobility, sensory, or other physical impairment, the licensee shall ensure that documentation is available for review at the group home that:
 - a. Is provided by the Division; and
 - b. Identifies modifications, if any, needed to the premises to ensure that the premises is accessible to and usable by the resident; and
- 3. Modifications are made to the premises as identified by the Division in subsection (2).

R9-33-205. Clean and Sanitary Conditions

A. A licensee shall ensure that a facility is free of accumulations of garbage or refuse, and garbage and refuse is:

- 1. Stored in cleanable containers or in sealable plastic bags; and
- 2. Removed from the facility at least once every seven days.

B. A licensee shall ensure that a facility is:

- 1. In good repair or has an on-going system to ensure repairs are made and that the facility does not contain a hazard;
- 2. Clean so that a condition in the facility is not a hazard;
- 3. Free of odors, such as urine or rotting food;
- 4. Free of any object, equipment, or condition that may be a hazard; and

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5. Free of insects and rodents or has an on-going system to eliminate insects or rodents from the facility.

R9-33-206. Vehicle Safety

- A.** A licensee shall ensure that a vehicle used to transport a resident:
1. Is maintained in safe and working order;
 2. Has a record of each maintenance or repair that is available for review at the facility for at least two years from the date of the repair; and
 3. Is equipped with:
 - a. A working heating and air conditioning system;
 - b. A first aid kit that meets the requirements in R9-33-207(A)(8);
 - c. Working seat belts for the driver and each passenger; and
 - d. Floor mounted seat belts and wheel chair lock-down devices for each wheel chair passenger transported, if the vehicle is used to transport a passenger in a wheelchair.
- B.** A licensee shall ensure that documentation of the requirements in subsection (A) is completed at least once every six months on a vehicle used to transport a resident and that the documentation is available for review at the facility for at least two years from the date of the vehicle inspection.

R9-33-207. Hazards and Dangers

- A.** A licensee shall ensure that:
1. Ramps, stairs, or steps have slip-resistant surfaces;
 2. If handrails and grab bars are installed in a facility, handrails and grab bars are securely attached and stationary;
 3. There are no firearms or ammunition at the facility;
 4. The facility does not contain unprotected wells, ditches, or holes that an individual may step or fall into;
 5. Cleaning compounds and toxic substances are maintained in labeled containers and stored to prevent a hazard;
 6. Bathtubs and showers contain slip-resistant strips, rubber bath mats, or slip-resistant surfaces;
 7. Unused furniture, equipment, or devices are removed from the facility or maintained in a covered area on the premises that is designated by the licensee for storage; and
 8. A facility contains a first aid kit that has the following items in a quantity sufficient to meet the resident's needs:
 - a. Adhesive strip bandages;
 - b. Sterile, individually wrapped gauze squares;
 - c. Rolled gauze;
 - d. Adhesive tape;
 - e. Individually wrapped non-stick sterile pads;
 - f. A triangle bandage for use as a sling;
 - g. Disposable gloves;
 - h. Scissors;
 - i. Tweezers; and
 - j. A cardiopulmonary resuscitation mouth guard or mouth shield.
- B.** A licensee shall ensure that a private residential swimming pool meets the following requirements unless the Division provides to the Department, at the time of initial licensure and renewal, written documentation indicating that, based upon a determination by the Division, the private residential swimming pool is safe, based upon the functional level of the residents. A private residential swimming pool:
1. Is surrounded by a fence or enclosure that:
 - a. Is at least five feet high;
 - b. Is free of an opening that exceeds four inches. A chain link or wire mesh fence, other than chicken wire, may be used if the openings do not exceed 1 3/4 inches;
 - c. Is free of openings for handholds or footholds on the exterior of the fence or enclosure;
 - d. Is at least 20 inches from the edge of the private residential swimming pool; and
 - e. Has self-closing, self-latching gates that open out from the private residential swimming pool and that are locked when the private residential swimming pool is not in use;
 2. Is located at least 54 inches from the exterior wall of the facility to allow evacuation without entering the private residential swimming pool area; and
 3. Is not located in the path of an emergency exit.
- C.** A licensee shall ensure that a private residential swimming pool area contains water rescue items, including:
1. A shepherd's crook that is attached to its own pole; and
 2. A ring buoy with a rope attached. The rope is at least ten feet long plus the distance from the edge to the middle of the private residential swimming pool.
- D.** A licensee shall ensure that a spa:
1. Is enclosed by a fence described in subsection (B), if a resident is under the age of six; and
 2. That is not enclosed by a fence in subsection (B), is covered and locked to prevent access by a resident.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

PREAMBLE

1. **Sections Affected:**
R17-1-102
Table B
- Rulemaking Action:**
Amend
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 28-366 and 41-1073
Implementing statutes: A.R.S. §§ 41-1072 through 41-1076
3. **The effective date of the rules:**
February 11, 2002
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 4362, October 5, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 4316, October 5, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 4426, October 12, 2001 (republished due to errors)
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Wendy S. LeStarge, Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules.
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The Arizona Department of Transportation ("ADOT") recently amended its Licensing Time-frames rule. ADOT is amending the rule so that when an applicant fails to respond to a request for additional information, ADOT will treat the application as withdrawn and not send out a notice of denial.

ADOT also is increasing the time-frames for junkyard licenses and encroachment licenses. The current rule does not allow enough flexibility for ADOT groups to review a junkyard license application, especially because staff have other job duties requiring attention. The proposed rule increases the administrative completeness review time-frame from 10 to 30 days, the substantive review time-frame from 30 to 60 days, and the overall time-frame from 40 to 90 days.

For encroachment licenses under the current rule, ADOT engineering districts with only one or two permit staff are unable to adequately review an application within the 15 day administrative completeness review time-frame if a staff person is out of the office on sick or annual leave. ADOT is increasing the administrative completeness review time-frame for encroachment licenses from 15 to 30 days and the overall time-frame from 135 to 150 days.
7. **A reference to any study that the agency relied on its evaluation or justification for the rule, and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable

9. The summary of the economic, small business, and consumer impact:

The general public should benefit by knowing and being able to plan on how long ADOT will take to decide on a license. The general public may face a not-readily-quantifiable cost due to the time-frame increase to conduct a review for encroachment and junkyard licenses.

ADOT should have a minimal to moderate benefit in no longer having to mail a notice of denial to an applicant who fails to respond. ADOT should incur a not-readily-quantifiable benefit for being able to comply with its new time-frames for encroachment and junkyard licenses. The proposed time-frames realistically reflect the staff resources required for the amount of work to review the licenses received. ADOT will incur minimal administrative costs inherent with any rulemaking.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The heading of the Chapter was changed from “Administrative Services Division” to the correct heading of “Administration”, under the new recodified version. Grammatical changes were made also at the suggestion of the Governor’s Regulatory Review Council’s staff.

11. A summary of the principal comments and the agency response to them:

No comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

ARTICLE 1. GENERAL PROVISIONS

Section

R17-1-102. Licensing Time-frames

Table B. Intermodal Transportation Division

ARTICLE 1. GENERAL PROVISIONS

R17-1-102. Licensing Time-frames

A. Time-frames. The time-frames listed in Tables A and B apply to licenses issued by the Department.

1. “Department” means the Arizona Department of Transportation.
2. “License” has the meaning prescribed in A.R.S. § 41-1001(10).
3. “Administrative completeness review time-frame” has the meaning prescribed in A.R.S. § 41-1072(1).
4. “Overall time-frame” has the meaning prescribed in A.R.S. § 41-1072(2).
5. “Substantive review time-frame” has the meaning prescribed in A.R.S. § 41-1072(3).

B. Administrative completeness review – notice of deficiency. Within the time-frame for the administrative completeness review listed in Tables A and B, the Department shall notify the applicant in writing that the application is complete or incomplete. If the application is incomplete, the Department shall issue a notice of deficiency to the applicant specifying the information required to make the application administratively complete.

1. The notice of deficiency shall list all missing information.
2. A notice of deficiency issued by the Department within the administrative completeness review time-frame suspends the administrative completeness review time-frame and the overall time-frame, from the date the Department issues the notice of deficiency until the date that the Department receives all missing information from the applicant.

C. Denial during administrative completeness review.

- ~~1. The applicant may withdraw the application during the 60-day response period. If the applicant withdraws the application, the Department shall not issue a written notice of denial. If the applicant wishes to obtain a license after withdrawal of the application, an applicant shall submit a new application.~~
- ~~2.1. The Department shall issue a written notice of denial to an applicant if~~ If the applicant does not withdraw the application and does not respond, within 60 days after the date on a notice of deficiency issued under subsection (B), to each

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item listed in the notice of deficiency, the Department shall treat the application as withdrawn. The Department shall not issue a written notice of denial.

2. The applicant may withdraw the application during the 60-day response period. If the applicant withdraws the application, the Department shall not issue a written notice of denial. If the applicant wishes to obtain a license after withdrawal of the application, an applicant shall submit a new application.
3. The Department may issue a written notice of denial to an applicant before finding administrative completeness if the information provided by the applicant demonstrates that the applicant is not eligible for a license under the relevant statute or rules.
4. ~~A~~ The notice of denial shall provide a justification for the denial and an explanation of the applicant's right to a hearing or appeal.

D. Substantive review – additional information. Within the time-frame for the substantive review listed in Tables A and B, the Department may issue a comprehensive request for additional information, or by mutual agreement with the applicant, issue a supplemental request for additional information.

1. Any request for additional information shall list all items of information required.
2. Any request for additional information issued by the Department within the substantive review time-frame suspends the substantive review time-frame and overall time-frame, from the date the Department issues the request until the date that the Department receives all the required additional information from the applicant.

E. Denial during substantive review. The following provisions apply:

1. ~~The applicant may withdraw the application during the response period. If the applicant withdraws the application, the Department shall not issue a written notice of denial. If the applicant wishes to obtain a license after withdrawal of an application, an applicant shall submit a new application.~~
2. ~~1. The Department shall issue a written notice of denial to an applicant if~~ If the applicant does not withdraw the application and does not respond, within 60 days after the date on a request for additional information under subsection (D), to each item required by the request, the Department shall treat the application as withdrawn. The Department shall not issue a written notice of denial.
2. The applicant may withdraw the application during the 60-day response period. If the applicant withdraws the application, the Department shall not issue a written notice of denial. If the applicant wishes to obtain a license after withdrawal of an application, an applicant shall submit a new application.
3. The notice of denial shall provide a justification for the denial and an explanation of the applicant's right to a hearing or appeal.

F. Notification after substantive review. Upon completion of the substantive review, the Department shall notify the applicant in writing that the license is granted or denied within the overall time-frames listed in Tables A and B. ~~A~~ The notice of denial shall provide a justification for the denial and an explanation of the applicant's right to a hearing or appeal.

G. Applicant response period. In computing the applicant's response periods prescribed in this Section, the last day of a response period is counted. If the last day is a Saturday, Sunday, or legal holiday, the applicant's response period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

H. Effective date. This Section applies to applications filed with the Department on or after the effective date of this Section.

Table B. Intermodal Transportation Division

LICENSE	STATUTORY AUTHORITY	ADMINISTRATIVE COMPLETENESS REVIEW TIME-FRAME	SUBSTANTIVE REVIEW TIME-FRAME	OVERALL TIME-FRAME
Outdoor advertising permit	A.R.S. §§ 28-7901 to 28-7909	30 days	30 days	60 days
Encroachment permit	A.R.S. §§ 28-7053(A), 7053(D), 7045(2)	15 <u>30</u> days	120 days	135 <u>150</u> days
Junkyard screening license	A.R.S. §§ 28-7941 to 28-7943	10 <u>30</u> days	30 <u>60</u> days	40 <u>90</u> days

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

PREAMBLE

1. **Sections Affected:** R17-4-455
Rulemaking Action: Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 28-366
Implementing statute: A.R.S. § 28-7045
3. **The effective date of the rule:**
February 13, 2002
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 4364, October 5, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 4318, October 5, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 4429, October 12, 2001 (republished due to errors)
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Wendy S. LeStarge, Rules Analyst
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Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules.
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The Arizona Department of Transportation ("ADOT") is rewriting its entire body of administrative rules regulating statewide overdimensional permits. Even though the rewriting of the overdimensional permits rules is ongoing, ADOT needs to amend specific restrictions. ADOT is proposing a minor change to Appendix E, which is the table of restricted routes and escort requirements for all Arizona highways. ADOT is lifting the restrictions on the remaining portion of State Route 68. The highway has been reengineered. Restrictions are no longer necessary. ADOT is also imposing a 40 foot length restriction on a portion of US Route 191 that is currently regulated by signs.

Recodification of Title 17 of the Arizona Administrative Code became effective July 20, 2001. This notice of final rulemaking reflects numbering and Chapter and Article headings consistent with the recodification. No amendments were made to the text of R17-4-455. R17-4-455 is listed in order to give a reference location for Appendix E.

The rulemaking for rewriting all rules regulating statewide overdimensional permits will continue separately. ADOT will repeal all existing rules concerning overdimensional permits, as stated in the Notice of Rulemaking Docket Opening, published in 7 A.A.R. 3682, August 24, 2001. Concurrently, ADOT will incorporate the changes that this rulemaking proposes in the all-encompassing rulemaking on overdimensional permits, as stated in the Notice of Rulemaking Docket Opening published in 7 A.A.R. 3683, August 24, 2001.
7. **A reference to any study that the agency relied on its evaluation or justification of the rule, and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Department is lifting the restriction that requires vehicles over specified dimensions to travel with accompanying front and rear escort vehicles. By lifting highway restrictions, this rulemaking repeals regulation, thereby benefiting all concerned parties, without decreasing public safety. Overdimensional motor carriers will be able to travel these highways without additional restrictions. ADOT and the Department of Public Safety will have less regulation to enforce for State Route 68. For US 191, the Department is informing the public of a length restriction that is currently in place. The public receives a benefit by having this information easily accessible in rule format, instead of only being informed by signs on the highway. The costs of this rulemaking to the Department, the Governor's Regulatory Review Council, and the Secretary of State are minimal clerical costs incurred in preparation, review, editing, and publishing of the rule.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Minor stylistic changes were made at the request of the Governor's Regulatory Review Council's staff.

11. A summary of the principal comments and the agency response to them:

No comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rule follows:

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

ARTICLE 4. DRIVER LICENSES

Section

R17-4-455. Escort vehicles

ARTICLE 4. DRIVER LICENSES

R17-4-455. Escort vehicles

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change

B. No change

1. No change
2. No change
3. No change
4. No change

C. No change

1. No change
2. No change
3. No change
4. No change
5. No change

D. No change

1. No change

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2. No change

3. No change

Appendix C. No change

Appendix E. Table of Restricted Routes and Escort Requirements

ROUTE	FROM	TO	AT AND OVER A WIDTH OF	ESCORT –SPECIAL CONDITIONS
US 60	Jct SR 61	Jct US 180	12	F/R
US 61	Jct US 60	Jct US 180	12	F/R
SR 61	Jct US 191	State Line	10	F/R
SR 64	Milepost 237.1	Jct US 89	12	F/R
US 66	Jct I-40 West Flagstaff Traffic Interchange	Jct US 89	12	F/R
SR 67	Jct US A89	North Rim	10	F/R
SR 68	Jct SR 95	MP 14	12	F/R
SR 71	Jct US 60	Jct US 89	12	F/R
SR 72	Jct SR 95	Jct US 60	12	F/R
SR 73	Jct US 60	Jct Fort Apache Road	10	F/R
SR 77	Winkelman	Jct US 70	12	F/R
SR 77	Show Low	Holbrook	12	F/R
SR 78	Jct SR 75 and US 191	State Line	12	F/R
US 80	Douglas	State Line	12	F/R
SR 82	Sonoita	Jct US 80	12	F/R
SR 83	Sonoita	Route End	10	F/R
SR 85	International Boundary	Ajo	12	F/R
SR 86	Why (Jct SR 85)	Jct SR 286	12	F/R
SR 87	MP 117.85 (McDowell)	Winslow	12	F/R
SR 88	Jct US 60 (Apache Jct)	MP 242.04 (Roosevelt)	(Over Legal)	See Note #1
SR 88	MP 242.04 (Roosevelt)	Jct US 60 (Miami)	12	F/R
US 89	Jct US 93	Jct SR 69 (Prescott)	12	F/R
US A89	Jct US 89 (Prescott)	Jct SR 179 (Sedona)	12	F/R
US A89	Jct SR 179 (Sedona)	Flagstaff	10	F/R
US A89	Jct US (Bitter Springs)	Jacob Lake	(Legal Only)	See Note #1
US A89	Jacob Lake	Fredonia	12	F/R
US 93	Hoover Dam	MP 1.02	10	F/R
US 93	Wikieup	Jct SR 97	12	F/R
SR 95	Quartzsite	MP 148.02	12	F/R
SR 95	MP 148.02	MP 154.88	10	F/R
SR 95	Topock	Needles Bridge Road	12	F/R
SR 96	Jct SR 97	Hillside	10	F/R
US 163	Jct US 160 (Kayenta)	State Line	12	F/R
SR 170	Jct US 70	Route End	12	F/R
SR 179	Jct Interstate 17	Sedona	12	F/R
US 180	Jct SR 64	Flagstaff	12	F/R
US 180	Jct US 60 (Springerville)	Jct US 191 (Alpine)	12	F/R
SR 181	Jct US 191	Chiricahua Nat'l. Monument	12	F/R
SR 186	Dos Cabezas (MP 342.92)	Jct SR 181	10	F/R
SR 187	Jct 387	Jct SR 87	12	F/R
SR 188	Jct SR 88 (Roosevelt)	MP 255.44	(Legal Only)	See Note #1
SR 188	MP 255.44	Jct SR 87	12	F/R

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US 191	Jct Interstate 40	Jct US 160	12	F/R
<u>US 191</u>	<u>MP 173.18</u>	<u>Jct US 180 (Alpine)</u>		<u>See Note #2</u>
SR 260	Jct SR 87 (Payson)	Jct SR 277 (Overgaard)	12	F/R
SR 260	Indian Pine (MP 357.47)	Jct US 180	12	F/R
SR 264	Jct US 160	MP 471.29	12	F/R
SR 273	Jct SR 260	Jct SR 260	10	F/R
SR 277	Jct SR 260 (Heber)	Jct SR 77 (Snowflake)	12	F/R
SR 286	International Boundary	Jct SR 86	12	F/R
SR 288	Jct SR 88	Route End (Near Young)	(Legal Only)	See Note #1
SR 289	Jct Interstate 19	Route End	10	F/R
SR 366	MP 115	Route End (Graham Peak)	(Legal Only)	See Note #1
SR 373	Jct SR 260	Route End	12	F/R
SR 377	Jct SR 277	Jct SR 77	12	F/R
SR 386	Jct SR 86	Kitt Peak	10	F/R
SR 473	Jct SR 260	Route End (Hawley Lake)	10	F/R
SR 564	Jct US 160	Route End	12	F/R
US 191	MP 173.18	Jct US 180 (Alpine)	(Legal Only)	See Note #1
US 191	Saint Johns	Jct Interstate 40	12	F/R

Note #1: Movements over legal size and weight will be considered under Class C permits only.

Note #2: Maximum length allowed is 40 feet.

Abbreviations:

MP - Milepost

F/R - Escorts at Front and Rear

Jct - Junction of Routes

Arizona Administrative Register
Notices of Final Rulemaking

APPENDIX E
ESCORT REQUIREMENTS FOR CLASS A PERMITS

